

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE: PHENYLPROPANOLAMINE
(PPA) PRODUCTS LIABILITY
LITIGATION,

MDL NO. 1407

This document relates to:

Tamara Wallace v. Bayer
Corporation, et al.
No. 3-cv-3036

ORDERING GRANTING DURST
DISCOUNT DRUGS, INC'S MOTION
TO DISMISS THE INDIVIDUAL
CLAIMS OF TAMARA WALLACE AND
STRIKING MOTION TO DISMISS
FOR FAILURE TO COMPLY WITH
CMO NOS. 15 AND 15A

Durst Discount Drugs, Inc. ("Durst") moves this court to
dismiss the claims of plaintiff Tamara Wallace pursuant to
Federal Rule of Civil Procedure 12(b)(6) for failure to state a
cause of action.¹ Having reviewed the motion, the response filed,

¹The text of the motion also contains a motion to dismiss
the claims of plaintiffs Sherry Jones representative of Candace
Jones, Mack Chatman representative of Martha Chatman, Jessica
Acevedo (minor) through Barbara Stallworth, Lee Johnson and Ed
Magee for failure to comply with Case Management Order ("CMO")
Nos. 15 and 15A. These individuals, along with Ms. Wallace,
originally filed a multi-plaintiff action in Mississippi state
court in which Durst was named as a defendant. The action was
ultimately transferred to this court as part of the multi-
district litigation 1407 ("MDL 1407") and each of the above-named
plaintiffs timely filed individual complaints pursuant to CMO 15.
It is unclear whether Durst is asking the court to dismiss the

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1 and the reply thereto, the court hereby finds and rules as
2 follows:

3 Ms. Wallace alleges that she suffered an ischemic stroke
4 following the ingestion of Alka-Seltzer, a phenylpropanolamine
5 ("PPA") containing product. Alka-Seltzer is manufactured by
6 defendant Bayer Corporation ("Bayer"). Ms. Wallace further
7 alleges that she purchased the Alka-Seltzer product at Durst.

8 Ms. Wallace originally filed her claims as part of a multi-
9 plaintiff action in Mississippi state court. The action was
10 removed to federal court on the basis of diversity of citizenship
11 and ultimately transferred to this court as part of MDL 1407.
12 Thereafter, on September 2, 2003, Ms. Wallace filed an individual
13 complaint pursuant to the terms of CMO 15. In it she alleges
14 claims for strict product liability, negligence, breach of
15 warranty, and negligent misrepresentation.

16 On December 2, 2003, Ms. Wallace filed a motion to remand
17 the case back to Mississippi state court. Bayer opposed the
18 motion, arguing that Durst had been fraudulently joined for the
19 purpose of defeating diversity jurisdiction. The court agreed and
20 on May 5, 2004 issued an order denying plaintiff's motion for
21 remand. In the order, the court held that plaintiff had failed to
22 state a cause of action against Durst, and that the failure is
23 obvious according to the settled rules of Mississippi. Durst now

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25 multi-plaintiff action or dismiss the individual claims, but in
26 either case, the motion is moot because the multi-plaintiff
action was dismissed on May 7, 2004 and Durst is not named as a
defendant in any of the individual complaints.

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1 moves the court to dismiss Ms. Wallace's claims against it.

2 Based on the reasoning set forth in the May 5, 2004 order
3 denying Ms. Wallace's motion to remand, the court finds that Ms.
4 Wallace has failed to state a claim against Durst upon which
5 relief can be granted. Therefore, the court GRANTS Durst's motion
6 to dismiss plaintiff's claims pursuant to Federal Rule 12(b)(6)
7 and hereby dismisses the claims against Durst. In addition, the
8 court STRIKES the motion to dismiss for failure to comply with
9 CMO Nos. 15 and 15A.

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11 DATED at Seattle, Washington this 10th day of May, 2004.

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13 BARBARA JACOBS ROTHSTEIN
14 UNITED STATES DISTRICT COURT JUDGE
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